IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.4379 OF 2004

Radheshyam Bhagwandas Shah ...Applicant

Versus

Central Bureau of Investigation

Special Crime Branch, C.B.I. & Ors. ...Respondents

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Mr.A.P.Mundargi with Mr.Vijay Kantharia for Applicant.

Mr.Daneil Jacob with Mr.D.N.Salvi & Mr.Ejaz Khan for Respondent No.1.

Mr.A.S.Gadkari, A.P.P. for Respondent No.3.

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CORAM: A.M.KHANWILKAR, J.

DECEMBER 15, 2004.

P.C.

1. Heard Counsel for the parties. Perused the record.

2. This Application for bail is moved by accused No.5 in the case originally registered as F.I.R. I-59/2002 at Limkheda Police Station and

subsequently registered as FIR BS-1/2004/S/001 at Mumbai dated 1st January 2004. Thereafter, the investigation was taken over by the Central Bureau of Investigation.

3. The prosecution case as noted in the F.I.R. which came to be registered at Limkheda Police Station on 4th March 2002 is that after the Godhara Train Carnage on 27th February 2002, communal riot spread throughout the State of Gujarat. It is alleged that on 3rd March 2002, informant, along with her family members consisting of 16 men, women and children from Limkheda Taluka of Dahod, Gujarat tried to escape from the mobs that were moving in the area. They succeeded in reaching Chapparwad Village, where all of them took shelter near a field, which was connected with kutcha road going towards Pannivella Village. At around 11.00 hours, 25 to 30 people came in two jeeps, armed with lethal weapons and formed into an unlawful assembly. It is alleged that three out of the said persons, chased the informant, caught hold of her and forcibly separated her from others and after assaulting the informant, they committed rape

on her. Because of the physical assault, the informant became unconscious and when she regained consciousness, she found dead bodies of her family and relatives. It is alleged that other members of the mob physically and sexually assaulted other female members of the family of the informant, while the informant was being dragged separately. After the informant regained consciousness, she reached upto road where she was offered help, presumably by a Jawan. She was taken to Limkheda Police Station, where she registered the complaint. In the said complaint, she has named only three persons, who had physically and sexually assaulted her. She was sent for medical treatment and later on shifted to Iqbal Relief Camp at Godhara.

4. On 7th March 2002, another F.I.R. was recorded on the information provided by her through Godhara Camp, with Godhara Police Station as F.I.R.No.0/2002 and transferred to Limkheda Police Station for further investigation. In the second F.I.R. the informant has more or less, reiterated the events referred to in the earlier information. it is seen that after the investigation was done by

the concerned Police Station, ‘A’ Summary Report came to be filed in respect of the information provided by said Bilquis Yaqub Rasool. ‘A’ Summary was filed on 7th November 2002, which came to be accepted by the Court on 25th February 2003. However, later on, the State Crime Branch reopened the case on 12th September 2003 and issued non-bailable warrants on 5th November 2003 to accused Nos.1 to 3, who were named by the informant, having physically and sexually assaulted the informant. Non-bailable warrants came to be issued against other accused 4 to 12 on 27th November 2003. In the meantime, in proceedings before the Apex Court being Writ Petition (Criminal) No.118 of 2003 filed by the informant, the case was directed to be assigned to the Central Bureau of Investigation by order dated 16th December 2003. After the case was assigned to Central Bureau of Investigation, it was registered afresh and later on, accused Nos.1 to 12 came to be arrested on 22nd January 2004. The Central Bureau of Investigation has also proceeded against the concerned Police Officers of Limkheda Police Station and those Officers have been named as

accused Nos.13 to 18. Even the doctors who conducted the post mortem reports on the dead bodies, have been proceeded against and named as accused Nos.19 and 20. During the occurrence in question, 14 persons have been murdered, out of them 7 females, 4 males and three children between age group of three and a half years to nine years. Out of the dead persons, only bodies of eight persons could be traced. As mentioned earlier, the Applicant has been named as accused No.5 in connection with the alleged offence.

5. Substance of the argument canvassed before this Court on behalf of the Applicant for being released on bail, is that, there is absolutely no material, so as to indicate the complicity of the Applicant in relation to the alleged offence. It is argued that there are serious contradictions in the information recorded at different point of time. Besides, the Applicant has not been named by the informant in the earlier reports. It is submitted that the Applicant is a respectable person from the area, and is an Advocate by profession. It is only for that reason, the

Applicant has been falsely involved in connection with the alleged offence. It is argued that in any case, no role has been attributed to the Applicant either of having committed offence of rape or murder. In such a situation, the Applicant deserves to be enlarged on bail, as there is no possibility of Applicant influencing the prosecution witnesses or tampering with the prosecution evidence, in any manner. Besides, as the Applicant has deep roots in the Society, he will always be available at the trial, as and when required. It is submitted that no fruitful purpose would be served by keeping the Applicant in jail, more so, when investigation is complete and charge-sheet has also been filed. On the above arguments, it is prayed that the Applicant be enlarged on bail in connection with the alleged offence.

6. On the other hand, learned A.P.P. submits that there is no substance in the argument canvassed on behalf of the Applicant that there is no material to indicate complicity of the Applicant. He submits that the background in which

the offence has been committed and more so, the manner in which, it was originally registered and the fact that the concerned Police Officers who were responsible for recording of the information, have now been named as accused after the case has been handed over to Central Bureau of Investigation, on taking all these aspects into account, there is no substance in the argument canvassed on behalf of the Applicant that there is serious contradiction in the information as recorded, on which basis, the Applicant should be enlarged on bail. It is further submitted that there is evidence to show that the Applicant was party to the conspiracy, which was hatched after the Godhara Train Carnage, in which, it was decided that persons belonging to particular community, should be killed and women folks be raped and molested. The statement of witnesses would indicate that such conspiracy was hatched and in furtherance of that conspiracy, the offence in question has been committed by a group of persons who were freely moving in the area with lethal weapons and have physically and sexually assaulted female members and also killed several persons.

The learned A.P.P. has adverted to the statements of the concerned witnesses, which would establish this position. The Applicant has been named by the informant, as being member of the unlawful assembly and having participated in the offence. Learned A.P.P. submits that it will have to be kept in mind that the Applicant and the informant hails from the same area, and the informant has identified the persons who were involved in the commission of the alleged crime. He submits that assuming that no overt act has been assigned to the Applicant in the offence, that will make no difference because even if no role is assigned to the Applicant, as he is member of the unlawful assembly, he will be responsible for the common object of the unlawful assembly. Learned A.P.P. further contends that the case on hand is peculiar of its kind and there is all possibility of accused influencing the prosecution witnesses or tampering with the prosecution evidence, if enlarged on bail. Learned A.P.P. submits that the conduct of the accused during the investigation is also a good reason for refusing bail to the Applicant. The accused have declined to undergo lie-detection

test, brain finger test and test identification parade. Besides, it has come on record that while in custody, the accused threatened the Official, who went to jail to take the photographs of the accused. Even the prosecution witness No.45 and witness Imtiyaz complained of threats being received at the instance of the accused persons. In this backdrop, according to the learned A.P.P., it will be improper to enlarge the Applicant on bail.

7. To support the above submissions, reliance has been placed on the decisions reported in **2004(3) SCALE 257 in Kalyan Chandra Sarkar vs. Rajesh Ranjan @ Pappu Yadav & Anr.**, **(2004) 7 SCC 525 in Chaman Lal vs. State of U.P. & Anr., 2001 Cri.L.J. 1730 in Prahlad Singh Bhati vs. N.C.T., Delhi & Anr., 2004 SCC (Cri.) 1041 in the case of Charan Singh & Ors. vs. State of U.P.** and lastly, **1989 Cri.L.J.850 in Lalji & Ors. vs. State of U.P.** Indeed, the principles to be kept in mind while considering prayer for being released on bail are well established. Reliance has rightly been placed on the aforesaid decisions by the

learned A.P.P. to support the same. Applying the well settled principles, I shall proceed to consider the rival submissions.

8. Insofar as the argument that the Applicant has not been named in the First Information Report, as was recorded in Limkheda Police Station is concerned, I am in agreement with the argument canvassed by the Public Prosecutor that this submission will have to be considered in the context of the evidence, which has come on record. It has come on record that when the informant went to Limkheda Police Station immediately after she was physically and sexually assaulted, she disclosed the names of all persons to the concerned Police Officer. This position is reflected from the statements of witness Nos.82, 45 and 77, who have stated that they had seen that the informant was disclosing the names of persons who were involved in the alleged offence, but that information was not recorded by the Police Officer, who has now been named as accused in the case. Incidentally, witness No.82 is a Police Constable working in the same Police Station. Witness Nos.45

and 77 are persons who had taken shelter in the said Police Station. These persons being independent persons, at this stage, there is no reason to doubt that the informant had disclosed the names of the concerned accused who were involved in the alleged offence, but the said information was not duly noted in the F.I.R. Besides, learned prosecutor has rightly placed reliance on the decision of the Apex Court in the case of **Chaman Lal (supra)** to contend that merely because the Applicant is not named in the F.I.R. registered on 3rd March 2002 that would make no difference. It is seen that later on, the informant was sent for medical examination and shifted to Iqbal Relief Camp at Godhara, where she met the social workers and complained of the incident as well as the manner in which the Police Officer failed to record the information provided by her. On that basis, statement of the informant came to be recorded by the Executive Magistrate, in which, she has narrated the incident and named the Applicant out of the eleven persons. The statement made by informant before the doctor, who examined the informant was obviously in the context of the

physical and sexual assault on the informant. When the said information was disclosed to the doctor, who was examining the informant, he independently sent the informant to Godhara Police Station being a medico-legal case, the Godhara Police Station accordingly recorded the information on 7th March 2002 once again only in relation to the physical and sexual assault on the informant. As such, the omissions occurring in the said statements cannot be the basis to take the view that there is absolutely no material on record to indicate the complicity of the Applicant. On the other hand, my attention has been rightly drawn to the statements of Witness No.95, who specifically spoke about the conspiracy hatched when the accused persons including the Applicant were present. The alleged offence is obviously in furtherance of the said conspiracy. The presence of the Applicant at the scene of offence and the member of unlawful assembly, has been mentioned by the informant. In other words, there is material on record to indicate the complicity of the Applicant in relation to the alleged offence. If it is so, it is not a case for bail, having regard to the

seriousness of the offence and the nature of accusations. In the event of conviction, the sentence can be one of life sentence, including death penalty.

9. Be that as it may, I find substance in the submission canvassed by the learned A.P.P. that having regard to the conduct of the accused during the investigation, which will weigh against the Applicant. The accused persons have declined to undergo lie-detection test, brain finger test and test identification parade. Besides, it has come on record that while in custody, the accused persons threatened the Officials, who had gone to take photographs of the accused. Moreover, it has come on record that even the prosecution witness No.45 and witness Imtiyaz have complained of being threatened and influenced by the accused persons. It cannot be overlooked that the present offence is peculiar of its kind. Not only conspiracy was hatched by the accused persons in this case, but even the Police Officers did not properly discharge their duty in recording correct information provided by the informant and conducting fair

investigation into the alleged offence.

10. In that backdrop, even the said Police Officers have been named as accused in connection with the alleged offence. Moreover, the case has not only been assigned to the Central Bureau of Investigation, but the trial has also been transferred to a place outside the State where the offence took place by the Apex Court. The above circumstances are good indicator of the fact that if the Applicant is enlarged on bail, in all likelihood, attempt to influence the prosecution witnesses or tamper with the prosecution evidence. The argument that the so-called threats given to the prosecution witnesses were not at the instance of the Applicant/accused No.5 as such, does not commend to me.

11. Accordingly, this is not a case for releasing the Applicant on bail. On the other hand, the appropriate course, would be to direct early disposal of the trial. The Trial Court is, therefore, directed to expedite the trial and to conclude the same expeditiously. It is clarified

that the Trial Court shall decide the case uninfluenced by any observation made in this order which is limited for the purpose of considering the bail application. Ordered accordingly.

A.M.KHANWILKAR, J.